

RESOLUTION GRANTING THIRD ROUND SUBSTANTIVE CERTIFICATION #60-18

River Vale Township, Bergen County

WHEREAS, on December 15, 2008, River Vale Township, Bergen County, petitioned the Council on Affordable Housing (COAH) for substantive certification of a Housing Element and Fair Share Plan addressing its total 1987-2018 affordable housing obligation; and

WHEREAS, River Vale's affordable housing plan was originally the subject of litigation, leading to the Township entering into two settlement agreements, dated 1990 and 1991, to create affordable housing; and

WHEREAS, following the settlement of these cases, River Vale petitioned COAH for first round substantive certification on October 30, 1992; and

WHEREAS, the plan was not perfected and the Township received permission to amend its plan and repetition, which it did on February 27, 1995, and River Vale subsequently received second round substantive certification on January 10, 1996; and

WHEREAS, the second round affordable housing obligation for River Vale Township was 121 units, all new construction and the certified plan included a total of 136 credits, bonus credits, and reductions for zoning in place, yielding a 15-unit new construction surplus; and

WHEREAS, on July 20, 1998, River Vale filed a petition amending its Housing Element and Fair Share Plan in order to confer to River Vale the right to determine the number of units, within a range, to be transferred or built on a project site; and

WHEREAS, two objections were filed in response to the Township's amendment, which necessitated mediation and no agreement was reached with either party, concluding mediation on February 6, 1999; and

WHEREAS, River Vale did not move forward with this amendment and its second round substantive certification remained in place; and

WHEREAS, on December 30, 2008, River Vale submitted a petition for third round substantive certification pursuant to N.J.A.C. 5:96 and N.J.A.C. 5:97; and

WHEREAS, on December 10, 2008 COAH granted River Vale a waiver of N.J.A.C. 5:97-8.1(d) and 8.7(a), which permitted the Township to spend the \$947,074 balance of its affordable housing trust fund on the acquisition of the Kirk site to create 31 age-restricted rental units; and

WHEREAS, pursuant to N.J.S.A. 52:27D-313 and N.J.A.C. 5:96-3.5, on March 9, 2009, the Township published notice of its petition in the *Jersey Journal*, which is a newspaper of general circulation within the County; and

WHEREAS, one objection to the plan was received by COAH during the 45-day objection period, which ended April 17, 2009; and

WHEREAS, this objection was submitted on behalf of Henry J. Bonnabel, who owns properties located in the Township, known as Block 2301, Lots 11, 12 and 21, and claims that those sites are ready and available to provide low- and moderate-income housing in River Vale; and

WHEREAS, on July 23, and October 21, 2009, a COAH Task Force recommended to the full Council that River Vale's request that COAH waive conditions the Council imposed when granting a waiver to the Township on December 15, 2008 be denied; and

WHEREAS, River Vale sought the release of previously committed Green Acres funding from the New Jersey Department of Environmental Protection, without which the preservation for open space of site I6A, a former affordable housing site, and the development of an inclusionary project by River Vale Developers at site I6B was being delayed; and

WHEREAS, a COAH task force met on December 9, 2008 and recommended that the Council grant a waiver with the following conditions:

1. River Vale will use the \$947,074 in development fees to purchase the 4.3-acre Kirk site for the creation of 31 age-restricted rental units, and shall not alter or amend the use of this site without COAH's approval of an amendment to the Township's plan.
2. River Vale shall submit the final appraisal report and the revised contract of sale prior to expending affordable housing trust funds at closing on this property, which is tentatively scheduled for December 19, 2008.
3. River Vale will create the 23 family rental and for-sale units previously attributed to this site elsewhere in the municipality and shall include plans for all 23 of these units in its third round Housing Element and Fair Share Plan, which shall be submitted on or before December 31, 2008 at Noon.
4. River Vale shall include in its third round petition a request for a waiver from COAH's requirement to spend 30% of affordable housing trust funds on affordability assistance and the petition shall further lay out when and in what amounts the municipality anticipates collection of development fees that can, at a later date, be used to provide the requisite affordability assistance.
5. River Vale shall include in its third round petition development schedules delineating specific start and finish dates for both the 31-unit and the 23-unit projects.
6. COAH will recommend the release of the New Jersey DEP's Green Acres funding earmarked for the removal of the previously certified River Vale Developers site at such time as COAH staff determines that the Township's Housing Element and Fair Share Plan addresses the Township's entire prior round and growth share obligation.
7. River Vale shall execute developers' agreements, and provide development proformas, for the 31 age-restricted rental units and the 23 family rental and for-sale units within 60 days of a Council report requesting such documentation. If the information is not

submitted or the developments are not deemed to create a realistic opportunity for affordable housing, the Township will be required to reimburse COAH \$947,074; and

WHEREAS, the conditions of the previous resolutions were met by the Township and COAH issued a letter to that effect on November 16, 2009; and

WHEREAS, on November 16, 2009, COAH requested that the Green Acres Office release previously committed funds for the project permitting the inclusionary project at I6B to commence; and

WHEREAS, mediation commenced on July 7, 2009 and continued on August 11 and October 6, 2009; and

WHEREAS, at the conclusion of the third mediation session on October 6, 2009, no agreement had been reached between the parties; and

WHEREAS, mediation was subsequently closed on October 6, 2009, and a mediation report was issued on January 21, 2010 (Appendix 1 to the COAH Compliance Report, which is Exhibit A to this resolution); and

WHEREAS, River Vale Township's fair share plan addresses a total 1987-2018 affordable housing obligation of 149 units, consisting of a zero-unit rehabilitation share, an 121-unit prior round obligation and a 28-unit projected growth share obligation pursuant to N.J.A.C. 5:97; and

WHEREAS, COAH staff has reviewed the Township's Housing Element and Fair Share Plan; and

WHEREAS, River Vale proposes to address its 121-unit prior round obligation with seven credits for existing family, for-sale units at the Pine Lake project; 30 credits and 30 rental bonuses for 30 existing Supportive / Special Needs bedrooms at the Spectrum for Living complex; five credits for five existing Supportive / Special Needs bedrooms at New Concepts for Living group home; six credits for 11 existing assisted living units at the Jewish Home for the Aged; eight credits for proposed family for-sale units at the River Vale Developers site; 11

family for-sale units at the Mesker Inclusionary project; and 24 credits for age-restricted rental units proposed at the Kirk site; and

WHEREAS, River Vale proposes to address its 28-unit projected growth share obligation with 24 proposed family rental units and seven rental bonuses at the Mesker municipally-sponsored project, one family for-sale unit at the Mesker Inclusionary project and seven age-restricted rental units from the municipally-sponsored Kirk project which will be attributed to the third round, for a total of 39 credits and bonuses, creating an eleven-unit surplus; and

WHEREAS, River Vale's amended development fee ordinance was approved by COAH on June 16, 2009; and

WHEREAS, River Vale's spending plan was approved by COAH on February 2, 2010; and

WHEREAS, pursuant to N.J.A.C. 5:96-6.2(a)2, on January 21, 2010, COAH issued a Compliance Report (attached as Exhibit A and incorporated by reference herein) recommending approval of River Vale Township's petition for third round substantive certification; and

WHEREAS, there was a 14-day period to submit comments to the COAH Compliance Report pursuant to N.J.A.C. 5:96-6.2(b) and COAH received no comments during this timeframe.

NOW THEREFORE BE IT RESOLVED that the Housing Element and Fair Share Plan submitted by River Vale comports to the standards set forth at N.J.S.A. 52:27D-314 and meets the criteria for third round substantive certification pursuant to N.J.A.C. 5:96-6.3; and

BE IT FURTHER RESOLVED that, pursuant to N.J.A.C. 5:97-4.1(d), all credits will be verified and validated during monitoring subsequent to substantive certification pursuant to N.J.A.C. 5:96-11; and

BE IT FURTHER RESOLVED that, pursuant to N.J.A.C. 5:96-6.2(a), after having reviewed and considered all of the above, COAH hereby grants third round substantive certification to River Vale Township; and

BE IT FURTHER RESOLVED, the Township execute a developer's agreement with the Bergen County Housing Authority for the development of the municipally-sponsored projects at the Kirk and Mesker sites within 45 days of receiving substantive certification; and

BE IT FURTHER RESOLVED that, pursuant to N.J.A.C. 5:96-6.3(e), River Vale Township shall adopt all implementing Fair Share ordinances within 45 days of receiving substantive certification; and

BE IT FURTHER RESOLVED that if the Township fails to timely adopt its Fair Share Ordinances, COAH's grant of substantive certification shall be void and of no force and effect; and

BE IT FURTHER RESOLVED that River Vale shall submit certified copies of the adopted ordinances and the executed developer's agreement to COAH within seven days of adoption and execution; and

BE IT FURTHER RESOLVED that River Vale shall comply with COAH monitoring requirements as set forth in N.J.A.C. 5:96-11, including reporting the Township's actual growth pursuant to N.J.A.C. 5:97-2.5; and

BE IT FURTHER RESOLVED that, pursuant to N.J.A.C. 5:96-10.1, COAH shall conduct biennial plan evaluations upon substantive certification of River Vale's Housing Element and Fair Share Plan to verify that the construction or provision of affordable housing has been in proportion to the actual residential growth and employment growth in the municipality and to determine that the mechanisms addressing the projected growth share obligation continue to present a realistic opportunity for the creation of affordable housing; and

BE IT FURTHER RESOLVED that if upon any biennial review the difference between the number of affordable units constructed or provided in River Vale and the number of units required pursuant to N.J.A.C. 5:97-2.5 results in a prorated production shortage of 10 percent or greater, or the mechanisms addressing the projected growth share obligation no longer present a realistic opportunity for the creation of affordable housing, then the Council may direct the municipality to amend its plan to address the shortfall; and

BE IT FURTHER RESOLVED that, pursuant to N.J.A.C. 5:97-2.5(e), if the actual growth share obligation determined is less than the projected growth share obligation, River Vale shall continue to provide a realistic opportunity for affordable housing to address the projected growth share; and

BE IT FURTHER RESOLVED that, pursuant to N.J.A.C. 5:96-6.3(b), River Vale's substantive certification shall remain in effect until December 30, 2018; and

BE IT FURTHER RESOLVED that any changes to the facts upon which this substantive certification is based, or any deviations from the terms and conditions of this substantive certification, which affect the ability of the Township of River Vale to provide for the realistic opportunity of its fair share of low- and moderate-income housing, and which the Township fails to remedy, may render this certification null and void.

I hereby certify that this resolution was
duly adopted by the Council on Affordable
Housing at its public meeting on March 10, 2010

A handwritten signature in cursive script, reading "René Reiss". The signature is written in black ink and is positioned above the printed name of the signatory.

René Reiss, Secretary

Council on Affordable Housing



Council on Affordable Housing



***Compliance Report
January 21, 2010***

Municipality: *Township of River Vale*
County: *Bergen County*

COAH Region: *1*
Planning Area: *1*
Special Resource Area: *N/A*

Housing Element and Fair Share Plan Adopted: *December 15, 2008*
Petition for 3rd Round Substantive Certification: *December 18, 2008*
Completeness Determination: *February 25, 2009*
Date of Publication: *February 28, 2009*

Objections Received: *Henry J. Bonnabel*

Petition Includes:

VLA: *No*

GPA: *No*

Waiver: *Yes* **Section:** *N.J.A.C. 5:97-8.8, determined to be unnecessary*

Date of Site Visit: *July 6, 2009*

History of Approvals:

	COAH	SETTLEMENT AGREEMENTS
First Round:		<i>12/3/1990 and 4/22/1991</i>
Second Round:	<i>1/10/1996</i>	
Extended Certification:	<i>denied 7/27/2005</i>	

Plan Preparer: *Michael D. Kauker, PP/AICP, Kauker & Kauker Town Planning*

Municipal Housing Liaison: *Robert Gallione, Administrator, River Vale*

SUMMARY OF FAIR SHARE OBLIGATION

Rehabilitation Share	0
Prior Round Obligation	121
Projected Growth Share Obligation (Net)	28

ACTUAL GROWTH and GROWTH SHARE through September, 2008^u

Res Units (#)	Actual Res Growth Share	Jobs (#)	Actual Non-Res Growth Share	Actual TOTAL Growth Share
45	9 units	230	14.4 units	23 units

COMPLIANCE PLAN SUMMARY

Obligation	Credit/ Mechanism Type	# Units Completed	# Units Proposed	TOTAL
Rehabilitation: 0 units				
NEW CONSTRUCTION:				
Prior Round: 121 units				
Credits	Post-1986	48		48
Proposed Mechanisms	Inclusionary Zoning		19	19
	Municipally-Sponsored Development		24	24
Prior Round Bonuses	Rental	30		30
Prior Round Subtotal				121
Growth Share: 28 units				
Proposed Mechanisms	Municipally-Sponsored Developments		32	32
Growth Share Bonuses	Rental		7	7
Growth Share Subtotal				39
Surplus				11

^u This growth share number does not take into account allowable exclusions permitted under N.J.A.C. 5:97-2.4; therefore, the actual growth share may vary.

I. BACKGROUND

River Vale's affordable housing plan was originally the subject of litigation, leading to the Township entering into two settlement agreements, one with the River Vale Realty Co., Inc. in 1991 and one with U.S.C. Realty of River Vale, Inc. and LaSala and Higgins Joint Venture in 1990.

Following the settlement of these cases, River Vale petitioned COAH for first round substantive certification on October 30, 1992. The plan was not perfected and the Township filed a motion pursuant to N.J.A.C. 5:91-14.2, on May 19, 1994, requesting permission to amend its Housing Element and Fair Share Plan to address its cumulative second round obligation. COAH granted River Vale's request on July 20, 1994, with the requirement that the Township re-petition COAH with a new plan by March 6, 1995.

River Vale did so on February 27, 1995, and received second round substantive certification on January 10, 1996. The second round affordable housing obligation for River Vale Township was 121 units, all new construction. The plan certified by COAH included a total of 136 credits, bonus credits, and reductions for zoning in place, yielding a 15-unit new construction surplus. Zoning in place represented 76 units and options for up to 44 payments in lieu of constructing units pursuant to the terms of the Township's settlement agreements.

On July 20, 1998, River Vale Township filed a petition with COAH amending the Housing Element and Fair Share Plan. The proposed amendment would have given River Vale the right to determine the number of units, within a range, to be transferred or built on the site. The Township proposed to remove the payment in lieu option and replace it with a Township determined range of off-site and on-site units, which would be contrary to the court settlements. Two objections were filed in response to the Township's proposed amendment, one from United Properties and one from a civic group known as the River Vale Neighborhood Association. Mediation concluded on February 6, 1999, although no agreement was reached with either party. A COAH Mediation Report was presented at the June 2, 1999 COAH Board meeting.

On October 5, 2006, COAH staff met with the Mayor and representatives from the New Jersey Department of Environmental Protection (NJDEP) to discuss the municipal purchase of a previously certified affordable housing site for open space and the requisite repetition to replace that site.

On March 6, 2008, COAH received a copy of a letter to River Vale from the Green Acres office of the NJDEP, which advised River Vale not to proceed with acquisition of the River Vale Developers, I6A site, for use as open space without COAH approval, or to do so at their own risk.

On July 7, 2008, COAH staff participated in a conference call with River Vale Counsel Holly Schepesi and Administrator Robert Gallione regarding the removal of a certified site and the subsequent comprehensive plan submission and review.

On December 10, 2008 COAH granted River Vale a waiver of N.J.A.C. 5:97-8.1(d) and 8.7(a), which permitted the Township to spend the entire \$947,074 balance of its affordable housing trust fund on the acquisition of the Kirk site to create 31 age-restricted rental units.

On December 15, 2008, River Vale petitioned for third round substantive certification that removed the I6A site, but addressed the municipality's entire affordable housing obligation.

On July 23, and October 21, 2009, a COAH Task Force recommended to the full Council the denial of River Vale's request that COAH waive conditions it had previously imposed when granting the waiver of December 15, 2008. River Vale sought the release of Green Acres funding, which would allow the inclusionary project of River Vale Developers at I6B to proceed.

Mediation was held on July 7, August 11 and October 6, 2009. Mediation was closed on October 6, 2009 with the issuance of a COAH Mediation Report (attached as Appendix 1).

On November 16, 2009, COAH requested that the Green Acres Office release previously committed funds for the preservation of site I6A, a former affordable housing site, as this release would permit the inclusionary project at I6B, also owned by River Vale Developers, to commence.

II. HOUSING ELEMENT

Pursuant to N.J.S.A. 40:55D-28(b), the Housing Element is a required section of the Municipal Master Plan. The Housing Element must be designed to achieve the goal of access to affordable housing to meet existing and future housing needs, with special attention given to low- and moderate-income households. The housing needs analysis must include demographic information on existing and projected housing stock and employment characteristics, a quantification of low- and moderate-income housing need, and a consideration of the lands

within River Vale that are most appropriate to accommodate such housing. River Vale's Housing Element includes sufficient information regarding housing stock, demographic and employment characteristics and population trends pursuant to N.J.S.A. 52:27D-310.

Under N.J.A.C. 5:97-2.1(b), the Housing Element must also set forth River Vale's affordable housing fair share obligation, which is the sum of the rehabilitation share, the prior round obligation and the growth share.

A. Rehabilitation Share

The rehabilitation share is the number of existing housing units within River Vale as of April 1, 2000, that are both deficient and occupied by households of low or moderate income. As indicated in Appendix B of N.J.A.C. 5:97, River Vale has a rehabilitation share of zero units.

B. Prior Round Obligation

The prior round obligation is the cumulative 1987-1999 new construction obligation provided in Appendix C of N.J.A.C. 5:97. River Vale has a prior round obligation of 121.

C. Projected Growth Share

The projected growth share is initially calculated based on household (residential) and employment (non-residential) 2004-2018 projections. Pursuant to Appendix F of N.J.A.C. 5:97, River Vale has a residential projection of 242 units and a non-residential projection of 81 jobs, which results in an initial projected growth share obligation of 53 affordable units. However, after subtracting the allowable exclusions itemized in Worksheet A (attached as Appendix 2), the Township's residential projection is reduced to 114 units. Therefore, River Vale's total projected growth share for the period 1999-2018 is 28 affordable units consisting of a 23-unit projected residential growth share and a 5-unit projected non-residential growth share.^[2]

^[2] Pursuant to N.J.A.C. 5:97-2.2(d), River Vale's post exclusion residential projection of 114 units is divided by 5 to yield 23 units and the non-residential projection of 81 jobs is divided by 16 to yield 5 units. River Vale's total projected growth share is therefore 28 units (*res 23 + non-res 5*).

SUMMARY OF FAIR SHARE OBLIGATION

Rehabilitation Share	0
Prior Round Obligation	121
Projected Growth Share Obligation (Net)	28

II. FAIR SHARE PLAN

A Fair Share Plan, as required under N.J.A.C. 5:97-3.1, describes the completed or proposed mechanisms and funding sources, if applicable, that will be utilized to specifically address River Vale's rehabilitation share, prior round obligation, and growth share obligation and includes the draft ordinances necessary to implement that plan. Affordable housing must be provided in direct proportion to the growth share obligation generated by the actual growth. River Vale's Fair Share Plan, and the supporting documentation incorporated by reference therein, addresses the requirements of N.J.A.C. 5:97-3.1 as follows:

A. Plan to Address Rehabilitation Share

River Vale's Housing Element and Fair Share Plan do not include a request for rehabilitation credit as the Township has no third round rehabilitation obligation.

B. Plan to Address Prior Round Obligation

Prior Round Obligation Credits

River Vale is addressing a portion of its 121-unit prior round obligation with 48 post-1986 credits and 30 rental bonuses. In accordance with N.J.A.C. 5:97-4.1(d), all credits will be verified and validated during monitoring subsequent to substantive certification pursuant to N.J.A.C. 5:96-11.

Post-1986 Credits

Project/Development Name	Year Built	Type of Affordable Unit	# Units/Bedrooms	Bonus Type	# Bonuses	Total Units/Bedrooms + Bonuses
Pine Lake	2002	Family For-Sale	7	-	-	7
Spectrum for Living	1995	Supportive / Special Needs	30 bedrooms	Rental	30	60
New Concepts for Living	2002	Supportive / Special Needs	5 bedrooms	-	-	5
Jewish Home for the Aged	2007	Assisted Living	6	-	-	6
TOTALS			48		30	78

* River Vale requested credit for two assisted living units, however, according to information from the New Jersey Department of Health and Senior Services, this facility received its initial license, #02A00, on June 20, 2007, which was after the implementation of legislation at N.J.A.C. 8:36-5.1(h), known as the Singer Bill, which required that assisted living units created after September 1, 2001 set aside 10 percent of all beds for households eligible for a federal Medicaid Waiver and for which COAH provides affordable housing credit. River Vale is eligible for credit for only six of the 11 Medicaid Waiver beds at this facility as additional credits would be beyond the Township's age-restricted cap for its growth share plan. Medicaid regulates the affirmative marketing of these units.

Proposed Affordable Housing Mechanisms

River Vale proposes to address the remaining 43-unit prior round obligation through the following mechanisms:

Mesker - Inclusionary Zoning

Pursuant to N.J.A.C. 5:97-6.4, River Vale will utilize zoning on the 5.3-acre Mesker site at 634, 644, 650 and 654 River Vale Road (Block 701, Lots 5, 5.01, 5.02, 7, 8 and portions of 6 and 9) to address 11 units of its prior round obligation. (There will be a total of 12 family for-sale affordable housing units at Mesker, with one unit attributed to the third round obligation). According to the petition documents, the site is owned by Chemitek 2006, LLC, has street access on River Vale Road and is located in Planning Area 1 (PA1). Information submitted indicates that the site meets COAH site suitability criteria at N.J.A.C. 5:97-6.4(b)1, and is not encumbered by environmental constraints. Surrounding land uses include the Bergen Hills Golf Course, single-family homes and the River Vale Fire Department Complex. According to the NJDEP,

this site is within the approved sewer service area and receives water and sewer services from the Bergen County Utilities Authority (BCUA); however, the current capacity issues for this system may result in plan delays or denials.

The current Townhouse 1 (TH-1) zoning was adopted on March 10, 2008 as ordinance #192-2008 and requires a twenty percent set-aside for affordable housing. The developer of the site is seeking site plan approval and, according to the Township's consultant planner, is currently reworking the application based on comments from the board. These units must comply with COAH's regulations on bedroom distribution, the percentage of low- vs. moderate-income units, the required deed restriction, and other provisions of N.J.A.C. 5:97-9 and N.J.A.C. 5:80-26.1, *et seq.*, known as the Uniform Housing Affordability Controls (UHAC).

The petition and project checklist note that "[a]s part of an agreement for the Mesker project approximately 1.6 acres of land will be deeded to the Township...", of the entire 5.3-acre parcel, for the creation of a municipally-sponsored, 24-unit family rental project which will be attributed to the growth share obligation. The Township has provided a copy of an executed contract dated March 3, 2008, for the conveyance of the 330-foot by 220-foot parcel upon which the municipality plans to create family rental units; however, the executed contract obligates the developer to create a soccer field and bleachers. An updated copy of this agreement was executed on September 16, 2009, adding "[a]ccepted and agreed to: Mortgagee's of Record, as of September 16, 2009." This version was signed by the current holder of the loan, Oritani Bank, and the site owner, Chemitek. This re-executed version also stipulates that the developer will create a soccer field and bleachers. In support of the Township's assertion that this site will in fact create affordable housing units pursuant to its fair share plan, Mayor Joseph Blundo submitted a letter dated October 28, 2009, which asserts that "the Township of River Vale is wholly committed to using the 330-foot x 220-foot parcel of land to be conveyed in fee simple to River Vale by Chemitek to fulfill its affordable housing obligation in accordance with the information previously provided to COAH by River Vale."

[11 family rental units -inclusionary development (one additional unit in third round obligation)]

River Vale Developers – Previously Zoned site

Pursuant to N.J.A.C. 5:97-6.5, River Vale will rely on zoning at the unimproved 10.05-acre River Vale Developers site to address eight units of its prior round obligation. This project is located off of Poplar Road at Block 1001.01, Lots 2.01 and 10.01, and is within the Multifamily Affordable Housing zone (MFAH), which was created as a result of a Superior Court Settlement Agreement dated April 22, 1991. This zone permits seven units to the acre. Within the court settlement documents this parcel was known as I6B. It was later included in a Superior Court Order of Approval dated October 12, 1993, which laid out the land divestiture plans of the United Water Company pursuant to a New Jersey Board of Public Utilities Divestiture Order. This project received major subdivision approval on May 26, 1998, and major site plan approval on July 31, 2006, after recalculation of buildable acreage following the implementation of the NJDEP's C-1 Water protection regulations. A developer's agreement was executed on September 24, 2007. The delay between subdivision approval and site plan approval was attributed to litigation between the municipality and the developer regarding denied approvals and the Court's subsequent overturning of those denials. According to the NJDEP, this site is within the approved sewer service area and receives water and sewer services from the BCUA; however, current capacity issues for this system may result in plan delays or denials.

The preliminary site plan approval of July 31, 2006 required the developer to provide a plan for the provision of 10 affordable housing units on this site, resulting in a 20% set-aside. However, the municipality submitted an executed developer's agreement from September 24, 2007, which requires the developer to create affordable housing in the amount of a 16% set-aside, or eight units, within a non age-restricted for-sale development of 50 units. This project was included in a previously certified plan, and is referenced in the 2005 Master Plan, as a development project required to provide eight affordable housing units on site and eight payments in lieu of construction. The Township has clarified that this project includes eight family for-sale units and the obligation of River Vale Developers to pay \$280,000 in lieu of the development of another eight units, which will be used to provide affordability assistance. River Vale has also clarified that site I7C, which was listed in its previously certified plan as a contributory site and not a site actually creating affordable housing units, was approved for development of 11 single-family units on August 19, 2002. The Green Acres office has recently informed COAH that this site is also under consideration for permanent conversion to public

open space through purchase with Green Acres funds. As this site was contributory only, River Vale may remove it from its fair share plan without following the process utilized to remove the I6A site from its plan.

[8 family for-sale units and 8 payments in lieu of constructing affordable units]

Kirk – Municipally-Sponsored Development

Pursuant to N.J.A.C. 5:97-6.7, River Vale will rely on the 4.23-acre Kirk parcel at 426, 432 and 436 Cedar Lane, located at Block 1301, Lots 38, 39 and 40, to address the remaining 27 units of its prior round obligation. Previous development at the site included one single-family home, which will be demolished to create 31 age-restricted rental units in partnership with the Bergen County Housing Authority (BCHA). According to the petition, this site is suitable and is not encumbered by environmental restraints, save for the 300-foot, C-1 stream buffers required for the Holdrum Brook. This buffer will reduce the site's buildable area to 2.58 acres. According to the NJDEP, this site is within the approved sewer service area and receives water and sewer services from the BCUA; however, current capacity issues for this system may result in plan delays or denials. Surrounding land uses include multi-family housing units, single-family houses and the Hillsdale Swim Club.

On December 10, 2008, COAH approved a waiver request enabling River Vale to purchase this site from the Kirk Family, as an emergent housing opportunity, and to spend nearly \$1 million dollars of the Township's trust fund monies on the purchase. One of the stipulations of that resolution clarified that COAH would not recommend to the NJDEP that the Green Acres office release \$3.2 million dollars in previously committed funds to purchase a previously certified affordable housing site, I6A, for open space until the municipality provided a fair share plan that addressed its entire affordable housing obligation. River Vale subsequently provided additional information to supplement the petition, including an appraisal, a revised contract and pro formas. The outstanding item from the COAH resolution permitting use of development fees to purchase of this site required that River Vale provide an executed developer's agreement with the BCHA. The Township must provide this agreement within 45 days of substantive certification as a requirement of its certification. In a letter dated November 16, 2009, COAH requested that the Green Acres Office release these monies.

On October 7, 2009, the BCHA provided another letter in support of this project and pledged \$15,000 to cover soft costs. In addition, the BCHA has agreed to pursue FY 2010 funding and has already applied to the Bergen County Economic Development Office for \$65,000. BCHA's support letter assures River Vale that it will "diligently explore funding for this worthwhile project."

The Township has provided a pro forma delineating development expenses. In support of projects in its Fair Share Plan, River Vale has adopted resolution #2008-274, which outlines the Township's intent to bond for the creation of affordable housing units should there be a shortfall. The Township has also provided a revised development timeline. Pursuant to N.J.A.C. 5:97-3.2(a)4i, projects that are addressing prior round obligations or growth to date may not be phased but shall begin implementation upon substantive certification.

River Vale has provided a copy of the revised contract of sale for the three parcels which make up the Kirk property for a total of \$1,750,000. This revised contract has removed the stipulation that one unit at the site would serve as a family residence for the seller. River Vale has provided an appraisal estimating the value of this site at \$1,295,000. River Vale closed on this site on December 18, 2009. These units must comply with COAH's regulations on bedroom distribution, the percentage of low- vs. moderate-income units, the required deed restriction, and other provisions of N.J.A.C. 5:97-9 and N.J.A.C. 5:80-26.1, *et seq.*, known as UHAC. [24 of 31 age-restricted rental units]

Proposed Prior Round Affordable Housing Mechanisms

Type/ Name of Affordable Housing Mechanism	Type of Affordable Unit	# Units/ Bedrooms	Bonus Type	# Bonuses	Total Units /Bedrooms + Bonuses
River Vale Developers	Family For-Sale	8	-	-	8
Mesker Inclusionary	Inclusionary Zoning	11	-	-	11
Kirk Municipally-Sponsored	Age-Restricted Rental	24	-	-	24
TOTALS		43		0	43

Prior Round Obligation Parameters

River Vale has satisfied the applicable Prior Round parameters as follows:

Prior Round Rental Obligation:^[3] 30 Units

Development/Project Name	Type of Affordable Unit	# Units
Spectrum for Living	Supportive / Special Needs	30 bedrooms
New Concepts for Living	Supportive / Special Needs	5 bedrooms
Kirk	Age-Restricted Rental	24
Jewish Home for the Aged	Assisted Living	6
TOTAL		65

Prior Round Age-Restricted Maximum^[4] : 30 Units

Development/Project Name	Type of Affordable Unit	# Units
Kirk	Age-Restricted Rental	24
Jewish Home for the Aged	Assisted Living	6
TOTAL		30

Prior Round Rental Bonus Maximum^[5] : 30 Units

Development/Project Name	Type of Bonus	# Bonuses
Spectrum for Living	Rental	30
TOTAL		30

C. Plan to Address Projected Growth Share

Growth Share Obligation Credits

River Vale is not requesting any credits to address its projected growth share obligation.

^[3] Rental Obligation: $.25 (\text{prior round obligation} - \text{prior cycle credits} - \text{impact of the 20\% cap} - \text{impact of the 1,000-unit cap}) .25 (121 - 0 - 0 - 0) = 30.25$ or 30 N.J.A.C. 5:97-3.10(b)1

^[4] Age-Restricted Maximum: $.25 (\text{prior round obligation} + \text{rehabilitation share} - \text{prior cycle credits} - \text{rehabilitation credits} - \text{impact of 20\% cap} - \text{impact of 1,000-unit limitation} - \text{transferred or proposed RCA units addressing prior round obligation}) .25 (121 + 0 - 0 - 0 - 0 - 0 - 0) = 30.25$ or 30 N.J.A.C. 5:97-3.10(c)1

^[5] No rental bonuses shall be granted for rental units in excess of the prior round rental obligation, therefore, PR Rental Bonus Maximum = PR Rental Obligation or 30, N.J.A.C. 5:97-3.5

Proposed Affordable Housing Mechanisms

River Vale proposes to address its 28-unit growth share obligation through the following mechanisms:

Mesker Inclusionary project

Pursuant to N.J.A.C. 5:97-6.4, River Vale will attribute one family for-sale unit from the Mesker Inclusionary development project toward the Township's growth share obligation. [see site description on page 7] **[one family for-sale unit]**.

Mesker – Municipally-Sponsored Family Rental

Pursuant to N.J.A.C. 5:97-6.7, River Vale will utilize the Mesker municipally-sponsored family rental project to address 24 units of its projected 28-unit growth share obligation. As mentioned previously, this project will be created on 1.6 acres of land to be subdivided from the Mesker Inclusionary project and conveyed to the municipality. [see site description on p. 7]

In anticipation of the phasing of this project, River Vale's petition proposed that the RFP process begin in 2012 and the construction process begin in 2014. However, as of September 1, 2008, River Vale has incurred a growth share obligation of 23 affordable housing units. As such, this project is addressing a growth share obligation that River Vale has already incurred for the period 1999-2018. Therefore, pursuant to N.J.A.C. 5:97-3.2(a)4, River Vale cannot phase this project. The Township has provided a revised implementation schedule that sets forth a detailed timetable and presents a realistic opportunity as defined under N.J.A.C. 5:97-1.4.

River Vale has demonstrated site control through an executed contract of sale dated March 3, 2008, and reaffirmed on September 16, 2009, which delineates that River Vale will be deeded a parcel measuring 330 x 220 feet. River Vale's Mayor Joseph Blundo has assured COAH in a letter dated October 28, 2009, that the Township will create affordable housing units on the 330 x 220-foot parcel, in accordance with the preliminary site plans submitted and stipulates that this parcel will be placed under a long term lease to the developer, BCHA.

The Township has provided a pro forma delineating development costs and has provided a letter of intent from the BCHA dated October 15, 2009, wherein the BCHA "in good faith...has agreed to assist the Township in developing affordable housing" at this site. In addition, the BCHA is "supportive of the Township's decision to develop affordable housing and

as agreed, will diligently explore funding for this project.” Similar to the circumstances at the Kirk parcel, the Township must enter into an executed developer's agreement with the BCHA within 45 days of substantive certification as a requirement of that certification.

This project is eligible for seven rental bonuses pursuant to N.J.A.C. 5:97-3.5. This project will include four very low-income units to address River Vale’s obligation to provide very low-income units. As with the Mesker inclusionary site, these units must comply with relevant COAH and UHAC regulations. Specifically, the very low-income units must be so deed restricted. **[24 family rental units and 7 rental bonuses]**.

Kirk – Municipally-Sponsored Age-Restricted Rental

Pursuant to N.J.A.C. 5:97-6.7, River Vale will rely on the Kirk age-restricted rental project to address the remaining seven units of its projected growth share obligation. [See project description in previous section.] **[7 age-restricted rental units]**.

Proposed Growth Share Affordable Housing Mechanisms

Type/Name of Affordable Housing Mechanism	Type of Affordable Unit	# Units/Bedrooms	Bonus Type	# Bonuses	Total Units/Bedrooms + Bonuses
Mesker Inclusionary Zoning project	Family For-sale	1	-	-	1
Mesker Municipally-Sponsored	Family Rental	24	Rental	7	31
Kirk	Age-Restricted Rental	7	-	-	7
TOTALS		32		7	39

Growth Share Parameters

River Vale has satisfied the applicable Growth Share parameters as follows:

Growth Share Rental Obligation:^[6] 7 Units

Development/Project Name	Township of Affordable Unit	# Units
Mesker Municipally-Sponsored	Family Rental	24
Kirk	Age-Restricted Rental	7
TOTAL		31

Growth Share Family Rental Requirement^[7] : 4 Units

Development/Project Name	Township of Affordable Unit	# Units
Mesker Municipally-Sponsored*	Family Rental	24
TOTAL		24

*In accordance with N.J.A.C. 5:97-3.6(a)4, four of these units are addressing the minimum family rental requirement and are therefore not eligible to receive rental bonuses.

Growth Share Minimum Family Requirement^[8] : 14 Units

Development/Project Name	Type of Affordable Unit	# Units
Mesker Municipally-Sponsored	Family Rental	24
TOTAL		24

Very Low Income Minimum Requirement^[9] : 4 Units

Development/Project Name	Type of Affordable Unit	# Units
Mesker Municipally-Sponsored	Family Rental	4
TOTAL		4

^[6] Projected Growth Share Rental Obligation: .25 (Projected Growth Share) or .25 (28) = 7 units N.J.A.C. 5:97-3,10(b)3

^[7] Projected Growth Share Family Rental Requirement: .5 (Projected Growth Share Rental Requirement) or .5 (7) = 4 units N.J.A.C. 5:97-3.4(b)

^[8] Projected Growth Share Family Requirement: .5 (Units Addressing the Growth Share Obligation) or .5 (28) = 14 units N.J.A.C. 5:97-3.9

^[9] Growth Share Very Low Income Requirement: .13 (units addressing growth share) or .13 (28) = 3.64 or 4 units pursuant to P.L.2008, c.46

Age-Restricted Maximum^[10] : 7 Units

Development/Project Name	Type of Affordable Unit	# Units
Kirk	Age-Restricted Rental	7
TOTAL		7

Bonus Maximum^[11] : 7 Bonuses

Development/Project Name	Type of Bonus	# Bonuses
Mesker Municipally-Sponsored	Family Rental	7
TOTAL		7

Actual Growth Share Obligation

The actual growth share obligation will be based on permanent certificates of occupancy issued within River Vale for market-rate residential units and newly constructed or expanded non-residential developments in accordance with Appendix D of N.J.A.C. 5:97. At plan evaluation review pursuant to N.J.A.C. 5:96-10, COAH will compare the actual growth share obligation with the actual number of affordable units constructed.

The New Jersey Department of Community Affairs (NJ DCA) *Construction Reporter* indicates that between January 1, 2004 and September 2008, River Vale issued certificates of occupancy for 45 housing units and for the non-residential square footage equivalent of 230 jobs, yielding an actual growth share obligation through September 30, 2008, of 23 affordable units.^[12]

^[10] Projected Growth Share Age Restricted Maximum: .25 (Projected Growth Share) or .25 (28) = 7 units N.J.A.C. 5:97-3.10(c)2

^[11] Projected Bonus Maximum: .25 (Projected Growth Share) or .25 (28) = 7 units N.J.A.C. 5:97-3.2(b)

^[12] The number of residential COs (45) is initially divided by 5 to yield 9 units and the number of jobs (230) is initially divided by 16 to yield 14.37 units. River Vale's total actual growth share is therefore 23.37 or 23 units (*res 9 + non-res 14*). **Note:** This number does not take into account allowable exclusions permitted under N.J.A.C. 5:97-2.4; therefore, the actual growth share may vary.

D. Summary of Plan to Address Fair Share Obligation

REHABILITATION SHARE SUMMARY

Rehabilitation Share: Zero Units

PRIOR ROUND SUMMARY

Prior Round Obligation: 121 Units

	Name of Mechanism	# Units/ Bedrooms	Bonus Type	# Bonuses	Total Units/Bedrooms + Bonuses
Post-1986 Credits	Pine Lake	7	-	-	7
	Spectrum for Living	30 bedrooms	Rental	30	60
	New Concepts For Living	5 bedrooms	-	-	5
	Jewish Home for the Aged	6	-	-	6
Prior Round Subtotal		48		30	78
Proposed Mechanisms	River Vale Developers	8	-	-	8
	Mesker Inclusionary	11	-	-	11
	Kirk Municipally-Sponsored	24	-	-	24
Growth Share Subtotal		43		-	43
Plan Subtotal		91		30	121
TOTAL					121

GROWTH SHARE SUMMARY

Projected Growth Share Obligation: 28 Units

	Name of Mechanism	# Units/ Bedrooms	Bonus Type	# Bonuses	Total Units/Bedrooms + Bonuses
Proposed Mechanisms	Mesker Inclusionary	1	-	-	1
	Mesker Municipally-Sponsored	24	Rental	7	31
	Kirk	7	-	-	7
Subtotal		32		7	39
TOTAL					39
Surplus					11

III. FAIR SHARE DOCUMENT REVIEW

A. Development Fee Ordinance

River Vale's certified plan included a development fee ordinance that was approved by COAH on November 10, 1993, and adopted by River Vale on October 28, 1993. COAH granted River Vale approval of an amendment to its development fee ordinance on October 24, 2006, which was adopted by the Township on February 12, 2007. River Vale submitted a draft amended development fee ordinance for COAH's review and approval with its third round petition. The amended development fee ordinance was approved by COAH on June 16, 2009.

B. Third Round Spending Plan

River Vale's prior round spending plan was approved by COAH on January 10, 1996. A revised third round spending plan was submitted by River Vale with the Township's third round petition for COAH's review and approval. The Township has submitted a revised spending plan incorporating the changes resulting from COAH's December 10, 2008 grant of a waiver of N.J.A.C. 5:97-8.1 (d) and 8.7(a), to spend development fees on an emergent affordable housing opportunity. This revised spending plan was approved by COAH on January 14, 2010.

C. Affordable Housing Ordinance/Affordable Housing Administration

River Vale has an adopted affordable housing ordinance for its prior round obligation. River Vale has submitted a revised draft affordable housing ordinance that substantially comports with the requirements of the Uniform Housing Affordability Controls (UHAC), N.J.A.C. 5:80-26.1 *et seq.*, which was amended on December 20, 2004. The draft proposed ordinance has also been amended to comply with the barrier free subcode of the State Uniform Construction Code Act (N.J.S.A. 52:27D-119 *et seq.*) and the accessibility requirements of N.J.S.A. 52:27D-123.15. The draft ordinance has been reviewed by COAH staff and was approved on October 16, 2009. This approved ordinance must be adopted within 45 days of COAH's grant of substantive certification and submitted to COAH immediately upon adoption.

River Vale has submitted an ordinance, #2006-158, establishing the position of a municipal housing liaison and a resolution appointing a municipal housing liaison.

River Vale is responsible for the continued re-sale and re-rental of existing affordable units and the initial sale and rental of newly constructed affordable units within River Vale, and has provided an executed contract with the New Jersey Housing and Mortgage Finance Agency, dated July 10, 2006, for the administration of all affordable housing units within the municipality.

D. Affirmative Marketing Plan

River Vale has submitted an affirmative marketing plan that comports with the requirements of the UHAC. This plan was approved on October 27, 2009 and ensures that the units in the Township's 1987-2018 Fair Share Plan and all future affordable housing units will be affirmatively marketed to the region upon initial sale/rental and re-sale/re-rental. The plan must be adopted by resolution by River Vale within 45 days of COAH's grant of substantive certification and submitted to COAH.

IV. SUMMARY OF MEDIATION

A. Objections

COAH received one objection to River Vale's Third Round Housing Element and Fair Share Plan (Plan). Antimo Del Vecchio, Esq., submitted the objection, prepared by Art Bernard, on behalf of Henry J. Bonnabel. Mr. Bonnabel owns properties located in the Township, Block 2301, Lots 11, 12 and 21, and has maintained that those sites are ready and available to construct low and moderate income housing in River Vale. The objections and municipal response from River Vale are summarized in COAH's July 2, 2009 Pre-Mediation Report Requesting Additional Information.

B. Mediation

Mediation between the Township and representatives for Mr. Bonnabel took place in COAH's offices in Trenton and by telephone on July 7, 2009, August 25, 2009, and October 6, 2009. No mediation agreement was reached. Mediation concluded on October 6, 2009. The Mediation Report, dated January 21, 2010, is attached hereto as Attachment 2. The mediator

concluded that there are not any outstanding issues of material fact which necessitate referral to the Office of Administrative Law.

V. MONITORING

River Vale must comply with COAH monitoring requirements as set forth in N.J.A.C. 5:96-11, including reporting the Township's actual growth pursuant to N.J.A.C. 5:97-2.5. As indicated above, credits for built units will be validated and verified by COAH staff during monitoring prior to the first biennial plan evaluation. It should be noted that credits for affordable housing programs and/or affordable units must be in compliance with N.J.A.C. 5:97-4. If the units are determined to be ineligible for credit, COAH will notify River Vale in writing, and the Township may be directed to amend its certified plan to address the shortfall.

Pursuant to N.J.A.C. 5:96-10.1, COAH will conduct biennial plan evaluations upon substantive certification of River Vale's Housing Element and Fair Share Plan. The purpose of the plan evaluation is to verify that the construction or provision of affordable housing has been in proportion to the actual residential growth and employment growth in River Vale and to determine that the mechanisms addressing the projected growth share obligation continue to present a realistic opportunity for the creation of affordable housing. If upon any biennial review the difference between the number of affordable units constructed or provided in River Vale and the number of units required pursuant to N.J.A.C. 5:97-2.5 results in a prorated production shortage of 10 percent or greater or the mechanisms addressing the projected growth share obligation no longer present a realistic opportunity for the creation of affordable housing, the Council may direct the Township to amend its plan to address the shortfall.

VI. RECOMMENDATION

COAH staff recommends that River Vale be granted third round substantive certification. River Vale must provide COAH with executed developer's agreements with the BCHA for the development of the Kirk and Mesker municipally-sponsored projects within 45 days of substantive certification. In addition, River Vale must adopt all necessary implementing ordinances within 45 days of the grant of substantive certification and submit certified copies of

the adopted ordinances and the executed developer's agreements to COAH within seven days of the adoption or execution.

Appendix 1

Workbook A: Growth Share Determination Using Published Data

(Using Appendix F(2), *Allocating Growth To Municipalities*)

COAH Growth Projections Must be used in all submissions

Municipality Name:

River Vale

Enter the COAH generated growth projections from Appendix F(2) found at the back of N.J.A.C. 5:97-1 et seq. on Line 1 of this worksheet. Use the Tab at the bottom of this page to toggle to the exclusions portion of this worksheet. After entering all relevant exclusions, toggle back to this page to view the growth share obligation that has been calculated. Use these figures in the Application for Substantive Certification.

	Residential	Non-Residential
1 Enter Growth Projections From Appendix F(2) *	242	81
2 Subtract the following Residential Exclusions pursuant to 5:97-2.4(a) from "Exclusions" tab	Click Here to enter Prior Round Exclusions	
COs for prior round affordable units built or projected to be built post 1/1/04	20	
Inclusionary Development	0	
Supportive/Special Needs Housing	0	
Accessory Apartments	0	
Municipally Sponsored or 100% Affordable	27	
Assisted Living	2	
Other	0	
Market Units in Prior Round Inclusionary development built post 1/1/04	79	
3 Subtract the following Non-Residential Exclusions (5:97-2.4(b))		
Affordable units	0	0
Associated Jobs		
4 Net Growth Projection	114	81
5 Projected Growth Share (Conversion to Affordable Units Dividing Households by 5 and Jobs by 16)	22.80 Affordable Units	5.06 Affordable Units
6 Total Projected Growth Share Obligation		28 Affordable Units

* For residential growth, see Appendix F(2), Figure A.1, Housing Units by Municipality. For non-residential growth, see Appendix F(2), Figure A.2, Employment by Municipality.

Affordable and Market-Rate Units Excluded from Growth

Municipality Name:

River Vale

Prior Round Affordable Units NOT included in Inclusionary Developments Built post 1/1/04

Development Type	Number of COs Issued and/or Projected
Supportive/Special Needs Housing	
Accessory Apartments	
Municipally Sponsored and 100% Affordable	27
Assisted Living	2
Other	
Total	29

Market and Affordable Units in Prior Round Inclusionary Development

Built post 1/1/04

N.J.A.C. 5:97-2.4(a)

(Enter Y for yes in Rental column if rental units resulted from N.J.A.C. 5:93-5.15(c)5 incentives)

Development Name	Rentals? (Y/N)	Total Units	Market Units	Affordable Units	Market Units Excluded
Mesker	N	59	47	12	47
RVD I-6B	N	50	42	8	32
		0			0
		0			0
		0			0
Total		109	89	20	79

Jobs and Affordable Units Built as a result of post 1/1/04 Non-Residential Development

N.J.A.C. 5:97-2.4(b)

Development Name	Affordable Units Provided	Permitted Jobs Exclusion
		0
		0
		0
		0
Total	0	0

[Return To Workbook A Summary](#)

Appendix 2

RIVER VALE MEDIATION REPORT

River Vale Township/Bergen County

Melissa J. Orsen

COAH Mediator

January 20, 2010

Mediation was held on July 7, 2009, August 25, 2009, and October 6, 2009 between representatives for River Vale Township (“River Vale” or the “Township”) and Henry J. Bonnabel (“Bonnabel”) an objector to River Vale’s Third Round Housing Element and Fair Share Plan (“HEFSP”). Bonnabel filed an objection with the New Jersey Council on Affordable Housing (“COAH” or the “Council”) on April 7, 2009. Appearing on behalf of the Township were Mayor Joseph Blundo, Holly Schepisi, Township Attorney; Michael Kauker, PP, AICP, consulting planner, and George Shalhoub, Planning Board Member. Appearing for Bonnabel were Art Bernard, P.P, Antimo Del Vecchio, Esq., Henry Bonnabel and Robert Meyers.

Background

River Vale petitioned COAH on December 15, 2008, for third round substantive certification with a plan to address its cumulative affordable housing obligation which consists of a rehabilitation obligation of 0 units, a prior round fair share obligation of 121 units and a net projected growth share obligation of 28 units of affordable housing. According to the Council’s pre-mediation report of July 2, 2009, the prior round obligation will be addressed with 74 post-1986 credits and bonuses that will include the following projects: Pine Lake (seven units), Spectrum for Living (30 bedroom units with 30 rental bonus credits), New Concepts for Living (five bedroom units) and Jewish Home for the Aged (two units). River Vale proposes to address the remaining 47-unit prior round obligation through the following projects: the Mesker site-Inclusionary Zoning (12 family for-sale units), River Vale Developers – Previously Zoned site (eight family for-sale units), and the Kirk site – Municipally-Sponsored Development (27 of the proposed 31 age-restricted rental units). As noted in the pre-mediation report, River Vale is not requesting any credits to address its 28-unit projected growth share obligation. However, River Vale proposes to address its 28-unit growth share obligation with 39 proposed credits and bonuses from 1) the Mesker Municipally-Sponsored site (24 family rental units and seven rental bonuses); 2) the Kirk site (seven age-restricted rental units); 3) the Mesker Inclusionary Development site

(one family for-sale unit). Further detail regarding these projects, growth share parameters and additional background information is set forth in the pre-mediation report dated July 2, 2009.

The Township of River Vale received one objection to its Third Round Housing Element and Fair Share Plan (Plan). Antimo Del Vecchio, Esq., Beattie Padovano, LLC, submitted the objection, prepared by Art Bernard, on behalf of Henry J. Bonnabel. Mr. Bonnabel owns properties located in the Township, Block 2301, Lots 11, 12 and 21, and has maintained that those sites are ready and available to construct low and moderate income housing in River Vale.

Mr. Bonnabel submitted the following objections to the River Vale Plan:

- River Vale has failed to demonstrate that its zoning will accommodate COAH's residential and non-residential projection and states that River Vale is discouraging growth within the municipality;
- River Vale is seeking exclusions to its residential growth share obligation. Bonnabel notes that the Plan addresses its 1987-1999 prior round obligation and reduces its 1999-2018 housing obligation with the same sites. Bonnabel further notes that a substantial portion of the prior obligation was never constructed and argues that this exclusion would result in River Vale receiving an unlimited double credit for housing that may never be built;
- The Kirk Property, which received approval in the prior round, was never constructed. Bonnabel declares that River Vale should be required to submit a detailed plan for the Kirk site and adhere to an accelerated development schedule; Bonnabel further asserts that the Township should be required to construct the Kirk property almost immediately.
- River Vale is proposing to address its rental and very low income obligations through a 100% affordable project known as the Mesker Site, using a phased development approach. Bonnabel again maintains that River Vale should be required to submit a detailed plan for the Mesker Site. Bonnabel argues that the language in the Plan, the Township's failure to develop the Kirk site, together with its failure to determine that its zoning can accommodate COAH's projections, provides little comfort that this housing will ever be built.
- River Vale has not provided sufficient information to ensure that it maintains adequate funding for the development of the Kirk Site or the Mesker Site. Bonnabel notes that River Vale's development fee fund will not provide sufficient funding. Bonnabel further notes that River

Vale should demonstrate a sufficient bonding capacity to pay for the construction and operating costs for each site.

Mediation

The parties met several times to discuss the objections submitted in response to the Housing Element and Fair Share Plan and the Township's responses. The Township suggested that Mr. Bonnabel's objections are based upon inaccurate information. The Township also stated that the objections submitted by Bonnabel to COAH's rules are not permitted pursuant to COAH's regulations. The Township further took exception that no expert report, study or other data has been provided by the objector nor were proposed modifications, changes or other measures submitted to resolve affordable housing issues put forth by the objector other than to say that Bonnabel should be permitted to construct inclusionary housing. The Township maintains Bonnabel did not communicate his desire to rezone his properties despite the Township providing opportunities for public and developer comment. The Township questioned why Bonnabel did not previously discuss inclusion of his site in the Township's Housing Element and Fair Share Plan. Finally, the Township representatives noted that no demonstration has been made as to why any of Bonnabel's sites are suitable in accordance with N.J.A.C. 5:97-3.13. No recent application to the Township Boards has been made for any of these properties.

Bonnabel's representatives, including Antimo Del Vecchio, Esq., and Art Bernard, PP, took exception to the Township's complaints regarding its objections and whether their proposed sites are suitable for the construction of inclusionary housing. Substantively, the Township noted that the River Vale Developers site 1-6B has been approved by the Planning Board and that the Township had moved forward with the Mesker site, as evidenced by a rezoning in March 2008. On December 18, 2009, the Township closed on the Kirk property.

The Township noted that the objector's criticisms pertaining to the Kirk property are misplaced. The Kirk property was originally part of the Second Round Plan and although the project was not acted on during the prior round, the Township purchased this site on December 18, 2009, and has provided COAH with a letter of intent from the Bergen County Housing Authority to act as the developer. River Vale has also provided COAH with additional information concerning

the 12-unit family rental project to be created at the Mesker site, including a letter from Mayor Joseph Blundo, dated October 28, 2009, which asserts that “the Township of River Vale is wholly committed to using the 330 foot x 220 foot parcel of land to be conveyed in fee simple to River Vale by Chemitek to fulfill its affordable housing obligation in accordance with the information previously provided to COAH by River Vale.” The Bergen County Housing Authority has also provided a letter of intent to become the developer of this site. Plan implementation schedules for both Kirk and Mesker sites have been provided to COAH.

In its written response and at mediation, the Township maintained that the Township’s Fair Share Plan as constituted can address the Growth Share Obligation through the mechanisms proposed. The Township has requested an adjustment in the projections as permitted in the COAH regulations and has provided a plan that accommodates that number of affordable units generated as a result of the adjusted projected growth. The Township noted that COAH permits exclusions for sites addressing a prior round obligation.

The parties discussed Bonnabel’s properties and the potential for development. In the end, the parties were unable to reach an agreement but the Township did indicate that it would be amenable to discussing development with Bonnabel outside of COAH’s mediation process. As such, mediation was concluded on October 6, 2009. There are no contested issues of material fact. It is recommended that the petition be forwarded to the full Council for consideration as to compliance with COAH’s regulations and the granting or denial of substantive certification.